MINUTES OF MEETING OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 W. Washington Conference Room 308 Phoenix, Arizona 85007 Thursday, January 29, 2009 – 1:00 p.m.

Present:

Brian Delfs

Chairman (telephonic)

Joe Gosiger

Vice Chairman (telephonic)

Louis W. Lujano, Sr.

Member

Marcia Weeks John A. McCarthy, Jr. Member Member

Laura McGrory

Director

Andrew Wade

Acting Chief Legal Counsel

Noreen Thorsen Darin Perkins

Claims Manager

Gary Norem

Director, ADOSH Chief Accountant

Glenn Hurd

Accountant

Kara Dimas

Office Manager, Legal Div.

Teresa Hilton

Commission Secretary

Commissioner Lujano convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance were Scot Butler, the agency's lobbyist, Jeremy Richardson of CST Risk Management, Jenypher Jones of Snell & Wilmer and Jeremy Bethancourt of LeBlanc Building Co.

Approval of Minutes of January 22, 2009 Meeting

The Commission unanimously approved the Minutes of the January 22, 2009 meeting on motion of Mr. McCarthy, second of Mrs. Weeks.

Discussion &/or Action regarding Legislation

Scot Butler advised that the legislature held a special session last night regarding the \$1.6 billion budget deficit. This morning, bills were released in draft version. With respect to the agency, there is a proposal to sweep another \$3.3 million from the Administrative Fund along with an expenditure reduction and ensuing sweep of \$1.4 million from the Administrative Fund. He explained the issues associated with the proposed sweeps and that the bills attempt to make the budget adjustments effective February 28th. The Appropriations Committees will be meeting today and there will be floor actions tomorrow. Mr. Lujano asked if employment will be reduced. Mr. Butler advised that the hiring freeze is still in effect. He understands that the intent of the bills is to direct agencies as to the amount to cut and to give the agencies the discretion to determine how it should be done. Mrs. Weeks asked if the Legislature expects the Commission to borrow funds from the Special Fund. Mr. Butler responded that was not clear.

Mr. Butler provided the Commissioners with an updated legislative report of bills that would affect the agency. He stated there would be one more bill coming in from Senator Leff that deals with the reasonable, usual and customary standard for medical fees not covered by the

fee schedule. He and Ms. McGrory met with Senator Leff earlier this week regarding the proposal. The Senate deadline for introduction of bills is next Monday. Bills referred to the Banking and Insurance Committee include HB's 2057, 2146, 2198, 2199 and 2200. They are all scheduled for next Monday. Mr. Butler summarized each of these bills and the agencies' position with respect to each.

Discussion & Action of Request for Lump Sum Commutation

Margery C. Knagge (Carol) #93062-287746 – Noreen Thorsen presented this lump sum petition. She advised that Ms. Knagge requested a lump sum commutation of her unscheduled award of \$183.34 per month (present value \$26,081.95) in order to pay off bills and set aside the balance for medical unrelated to the industrial injury. Ms. Knagge is not employed. She receives monthly Social Security benefits in the amount of \$1,220.00 and pension/retirement in the amounts of \$100.00 and \$137.83.

Ms. Thorsen advised that the Claims Department is recommending approval of the lump sum commutation since it will allow Ms. Knagge to pay off some outstanding debt and have additional funds to set aside for medical expenses not related to the claim. Following discussion, the Commission unanimously approved the lump sum commutation on motion of Mr. McCarthy, second of Mr. Gosiger.

Discussion & Action of Proposed Civil Penalty Against Uninsured Employer

2C07/08-1605

GERALD LEE KELLY DBA INSTANT TAX SERVICE AKA A 2 Z BUSINESS CREDIT SOLUTIONS LLC

Andrew Wade advised that a compliance investigation confirmed that the above listed employer was operating (or had operated) a business with employees, but without workers' compensation insurance. Giving consideration to the factors of A.R.S. §23-907(K), Mr. Wade recommended that a civil penalty of \$1,000.00 be assessed against employer #1605. Following discussion, the Commission unanimously approved assessing a civil penalty of \$1,000.00 against employer #1605 on motion of Mr. McCarthy, second of Mr. Gosiger.

Discussion & Action of Proposed OSHA Citations and Penalties

Cobra Plastering, Inc.

751 N. Country Club Drive

Mesa, AZ 85201

Planned

Yrs/Business – 2

Empl. Cov. by Insp. -6

Site Location: 3275 S. Market Street, Gilbert, AZ 85234

Inspection #: Q7984/312781289

Insp. Date: 11/18/08

<u>SERIOUS</u> – Citation 1, item 1 – Two (2) employees were working from a steel canopy and were not protected from falling 12' to the roof below. (No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 2 – The employer did not implement a training program that instructed each employee in the recognition and avoidance of fall hazards.

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL DIV. PROP. - \$1,500.00

TOTAL FORMULA AMT - \$1,500.00

Darin Perkins summarized the citations and proposed penalty as listed. Following discussion and inspection of photos of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$1,500.00 on motion of Mr. Delfs, second of Mr. McCarthy.

Impact Plumbing & Mechanical, Inc.

P.O. Box 155

Yuma, AZ 85753

Complaint Yrs/Business - 2

Empl. Cov. by Insp. -3

Site Location: 2561 W. Ruthrauff, Tucson, AZ 85705

Inspection #: P0775/312757388

Insp. Date:

10/27/08

<u>SERIOUS</u> – Citation 1, item 1 – An employee was using a manlift without a personal fall arrest system to transport himself to the top of the building.

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 2 – The employer had not instructed or trained the employee in the recognition of unsafe conditions associated with operating a manlift.

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL DIV. PROP. - \$1,500.00

TOTAL FORMULA AMT - \$1.500.00

Darin Perkins summarized the citations and proposed penalty as listed. Following discussion and inspection of photos of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$1,500.00 on motion of Mr. McCarthy, second of Mr. Gosiger.

Pima County Health Department Tuberculosis Clinic

150 W. Congress Street

Complaint

Yrs/Business - 39 Empl. Cov. by Insp. -13

Tucson, AZ 85701

Site Location: 150 W. Congress Street, Tucson, AZ 85701

Inspection #: T3633/312881105

Insp. Date:

12/19/08

SERIOUS – Citation 1, item 1 – The TB risk assessment conducted by the employer identified the clinic as an "intermediate risk" area and the waiting room and treatment areas meeting CDC recommendations. There was another instance of this violation.

(No inspection history in the past three years).

Div. Proposal - \$2,125.00

Formula Amt. - \$2,125.00

Darin Perkins summarized the citation and proposed penalty as listed. Following discussion and inspection of photos of this violation, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$2,125.00 on motion of Mr. McCarthy, second of Mrs. Weeks.

Sacate Pellet Mills, Inc.

P.O. Box 49

Laveen, AZ 85339

Planned

Yrs/Business – 23

Empl. Cov. by Insp. -18

Site Location: 5555 W. Elliot Road, Laveen, AZ 85339

Inspection #: A7717/312836174

Insp. Date: 12/04/08

<u>SERIOUS</u> – Citation 1, item 1 – One (1) employee was working on a platform approximately 13' above the ground which was lacking guardrails or other equivalent means to prevent a fall. (No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

<u>SERIOUS</u> – Citation 1, item 2 – The employer did not establish an energy control program for those employees who perform maintenance/service on a hay grinder.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

<u>SERIOUS</u> – Citation 1, item 3 – The employer did not instruct each powered industrial truck (forklift) operator in the safe operation of three forklifts.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

 $\underline{SERIOUS}$ – Citation 1, item 4 – A bagging conveyor belt system was not guarded to prevent employees from placing any part of his/her body into the in-going nip points during the operating cycle. There was another instance of this violation.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

 $\underline{SERIOUS}$ – Citation 1, item 5 – A bag sewing machine had horizontal belt pulleys that were not guarded to protect employees from accidental contact.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

 $\underline{\text{SERIOUS}}$ – Citation 1, item 6 – A bagging machine with a conveyor belt system was not equipped with a guard to prevent accidental contact with sprockets and chains.

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL DIV. PROP. - \$4,500.00

TOTAL FORMULA AMT - \$4,500.00

Darin Perkins summarized the citations and proposed penalty as listed. Following discussion and inspection of photos of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$4,500.00 on motion of Mr. Gosiger, second of Mr. McCarthy.

Discussion &/or Action regarding all Industrial Commission New or Pending Rules, including A.A.C. R20-5-502 et seq., R20-5-401 et seq., R20-5-602, R20-5-106, R20-5-164, R20-5-102, and R20-5-127

Andrew Wade advised that Governor Brewer has issued a memorandum to state agencies directing that all rulemaking activity be suspended to allow her appointees to review any new or pending rules unless a special exception is allowed. He advised that the Commission has rulemaking that staff believes would fall under the exception, particularly the rulemaking packages addressing elevator, boiler and electrical standards. Two other rule packages deal with

workers' compensation and staff recommends that the Commission request exceptions for all five packages. Following discussion, the Commission unanimously agreed to request the exceptions on motion of Mr. McCarthy, second of Mr. Gosiger.

Discussion &/or Action regarding Operations of the Industrial Commission

Laura McGrory advised that this is a continuing agenda item and that she has nothing new to report at this time. Mr. McCarthy asked whether the Commission wanted to schedule one of the meetings in February for Tucson. It was agreed that this would be discussed at next week's meeting.

Announcements

Ms. Hilton reminded the Commissioners that the next meeting will be held on Wednesday, February 4th.

There being no further business to come before the Commission and no public comment, Commissioner Lujano adjourned the meeting at 1:40 p.m.

APPROVED:	THE INDUSTRIAL COMMISSION OF ARIZONA
AFFROVED.	
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	Chairman
	By Open a Cyring
	Vice Chairman
	By Louis W. hulans Sr.
	Member
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Commission Secretary	1 INTELLIOEI